IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

CWP No.423 of 2006

Date of decision 19.6.2007

State of H.P. and others Petitioners

Vs.

Sher Singh and another Respondents

Coram:

The Hon'ble Mr.Justice Rajiv Sharma,J.

Whether approved for reporting?[1] No.

For the Petitioners: Mr. M.S.Chandel, Advocate General, with Mr.M.A.Khan and Mrs.Meenakshi Sharma, Deputy Advocate Generals.

For the Respondents : Mr.Rahul Mahajan, Advocate, for respondent No.1.

Rajiv Sharma, J.

By way of this petition challenge has been laid to the award dated 4.7.2005 announced by the learned H.P. Labour Court-cum-Industrial Tribunal in reference No.276/2001. The brief facts for the adjudication of this petition are that the State Government had made the following reference to the Labour Court :

> "Whether the action of i) Director, Ayurveda, Himachal Pradesh, Shimla-9, ii) Manager, Government Auyurvedic Pharmacy, Joginder Nagar, District Mandi, H.P. of not giving the opportunity to Sh.Sher Singh son of Sh.Dagi Ram while appointing new workers on daily wages/part time basis in July, 1999 and April 2000 without following the provisions of section 25-G and 25-H of the I.D.Act, 1947 is justified and proper? If not, what relief of service benefits and amount of compensation the above workman is entitled to?"

---

[1] Whether reporter of local papers are allowed to see the judgment ? No.

In sequel to the reference, the workman had filed statement of claim before the Labour Court, stating therein that he was engaged on daily wages basis with effect from 1.8.1991 to March, 1993. It is further averred in the statement of claim that he was retrenched without following the mandatory provisions of the Industrial Disputes Act, 1947, hereinafter referred to as the 'Act'. The employer had also filed reply to the statement of claim and denied the averments made in the statement of claim, more particularly with regard to the continuity of the workman.

Mr.M.S.Chandel, learned Advocate General, appearing on behalf of the petitioners, has strenuously argued that the award dated 4.7.2005 is not sustainable in the eyes of law. Mr.Rahul Mahajan, learned Advocate, appearing on behalf of respondent No.1 had supported the award dated 4.7.2005.

I have heard the learned counsel for the parties and have also gone through the record of the case.

The interview was held by the employer on 26.7.1991 and vide order dated 12.7.1991 the workman was engaged on daily rated basis with effect from 1.8.1991. He was retrenched in the month of March, 1993. Mr.Rahul Mahajan submits that one Sohan Lal who was junior to him was retained while retrenching his client. He then contended that 20 workmen were engaged in the year 1999 and 2 workmen, namely, Charan Singh and Vijay Kumar who were working with him but terminated had been re-engaged by the employer in the year 2002. RW-1 Satwant Singh who appeared on behalf of the employer had admitted in his cross-examination that the employer had engaged two fresh daily wagers, namely, Des Raj and Amar Singh without affording any opportunity to the workman as stipulated under Section 25-H of the Act. He had also admitted that three persons, namely, Sohan Lal, Charan Singh and Vijay Kumar who were disengaged in the month of March, 1993 were re-engaged in the year 2002. It has also come in the record that twenty new

daily waged workmen were also engaged after retrenchment of the workmen in the year 1993. The submissions of the learned Advocate General that the workman had not completed 240 days is untenable for the simple reason that the workman for taking benefit of Section 25-G and Section 25-H under the Act need not complete 240 days as held by the Hon'ble Supreme Court in **Central Bank of India vs. S.Satyam and others**, (1996) 5 SCC 419. The findings recorded by the Labour Court with regard to violation of Sections 25(F) and (H) of the Act on the basis of the statement made by Satwant Singh (RW-1) are un-assailable.

This Court will not interfere in the specific findings recorded by the Labour Court that the persons junior to the petitioner were retained, twenty workmen were engaged after retrenching the workman and three workmen who were retrenched with the workmen were re-engaged in the year 2002 without calling upon the workman to join his duties. Accordingly, there is no merit in this petition and the same is dismissed. The Award passed by the learned Labour Court dated 4.7.2005 is upheld.

June 19, 2007(g) **(Rajiv Sharma), J.**